

September 26, 2017

The Honorable Rodney P. Frelinghuysen
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

The Honorable Nita M. Lowey
U.S. House of Representatives
Committee on Appropriations
Washington, DC 20515

The Honorable Greg Walden
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Frank Pallone, Jr.
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

Re: Risk of Impoundment of Appropriated Funds to Energy Efficiency Programs

Dear Chairman Frelinghuysen, Ranking Member Lowey, Chairman Walden, and Ranking Member Pallone:

Thank you for your past and continued support for federal energy efficiency and clean energy programs.

We, the undersigned, on behalf of a coalition of energy efficiency and clean energy organizations, states, trade associations, businesses and others, write today to urge you to prevent impoundment of appropriated funds and ensure the administration executes its authorities consistent with Congressional intent. This may be done by way of appropriations by including in bills or reports direction to agencies to carry out funded programs; specifying that funding for technical assistance, research, development, demonstration, and commercialization programs is to be used for those purposes; and requiring transparency of spending at a subprogram level. It may also be done by committees of jurisdiction through the normal conduct of agency oversight.

As you know, the administration's budget request proposes severe cuts across the board for energy efficiency programs, especially those administered by the U.S. Department of Energy (DOE) and Environmental Protection Agency (EPA).¹ We are adamantly opposed to those cuts. Now that the federal government is operating under the terms of a continuing resolution through December 8, 2017, we are concerned that critical energy efficiency and clean energy programs could go unfunded or unsupported while longer-term funding levels are negotiated. The suspension or cancellation of programs based on the administration's discretion—or the appearance of discretion—could contravene legislative direction, and potentially amount to impoundment, which, as you know, is “an action or inaction by the President or a federal agency that delays or withholds the obligation or expenditure of budget authority provided in law.”²

¹ Other agencies, including the U.S. Department of Housing and Urban Development (HUD) and General Services Administration (GSA), also carry out important energy efficiency programs and activities.

² According to the U.S. Government Accountability Office (GAO), “[t]here are two types of impoundment actions: deferrals and rescission proposals. In a deferral, an agency temporarily withholds or delays funds from obligation or expenditure.... A rescission involves the cancellation of budget authority previously

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Enforcement of the prohibition on impoundment is highly sensitive and might not result in a timely expenditure or other release of funds. Furthermore, some programs involve multi-year contracts and timelines and any suspension of funds could harm research efforts already underway. Therefore, we urge you take the precautions necessary to prevent any such scenario from occurring.

To this end, we offer this set of recommendations, and stand ready to provide additional support for your efforts to ensure that Congress's directives are followed and programs continue uninterrupted. First, while the continuing resolution is in force, we suggest robust and continuous oversight of DOE, EPA, and other agencies carrying out energy efficiency and clean energy programs. The U.S. Office of Management and Budget (OMB) is expected to issue guidance for agency spending through December 8. Congress has an obligation to hold agencies accountable, and the administration has a responsibility to answer questions about its performance. When letters and written inquiries are not enough, we urge you to call on senior leaders to testify on the record about the status of programs and their plans to ensure their agencies are acting consistently with Congressional intent.

Second, we recommend including clear direction to the administration in legislation or accompanying reports, as appropriate, to carry out programs, activities, and projects and expend funds as appropriated to at least the subprogram level past December 8. In some cases, where a program lacks specific authorization (i.e., EPA's WaterSense) or is funded as part of a portfolio of initiatives (i.e., EPA's ENERGY STAR®), it could be necessary to provide more detailed instructions than in past years to ensure these programs, activities, and projects continue.

Third, we recommend providing clear direction to the administration with respect to specific programmatic activities in legislation or accompanying reports, as appropriate, for the remainder of FY2018. Some successful programs provide commercialization assistance for energy efficiency and clean energy technologies or funding for field demonstrations, which the administration has indicated will be deprioritized. As evidenced by the language included in the Senate Energy and Water Development appropriations bill and report for Fiscal Year (FY) 2018, when Congress expects an agency (e.g., U.S. DOE) to carry out activities beyond basic research and demonstration, we recommend providing the administration with additional instructions that reflect Congress's intent.

And fourth, due to the inherent difficulties with identifying potential impoundment situations in a timely way, we suggest Congress include provisions to improve transparency with respect to how the administration is spending funds in FY2018 and beyond. For example, Congress could require agencies to provide it with budget allotments at the subprogram level. This would facilitate tracking and potentially address congressional queries concerning spending and progress. A complementary approach would be to require agencies to provide notification to Congress of certain reallocations or reallocations of funds.

provided by Congress (before that authority would otherwise expire), and can be accomplished only through legislation." In a footnote, GAO advises that "[d]eferrals for policy reasons are not authorized." (2 U.S.C. § 684(b)). *Principles of Federal Appropriations Law: Fourth Edition, Chapter 2*, GAO-16-464SP, March 10, 2016, pgs. 2-47 and 2-48.

